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Carolyn Goodman and Robert Summerfield

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CAT'S MEOW OF VEGAS, LLC d/b/a Cat's Meow,

**Plaintiff,**

VS.

THE STATE OF NEVADA, COVID-19 MITIGATION AND MANAGEMENT TASK FORCE; STEVE SISOLAK, in his official capacity as Governor of Nevada; AARON FORD, in his official capacity as Attorney General of Nevada; BARBARA CEGAVSKE, in her official capacity as the Nevada Secretary of State; CITY OF LAS VEGAS; CAROLYN GOODMAN, in her official capacity as Mayor of the City of Las Vegas; ROBERT SUMMERFIELD, in his official capacity as Director of the City of Las Vegas Department of Planning; and CALEB CAGE, in his official capacity as Chairman of the COVID-19 Mitigation and Management Task Force,

Defendant.

CASE NO. 2:20-cv-2055-APG-NJK

**DEFENDANTS CITY OF LAS VEGAS,  
CAROLYN GOODMAN AND ROBERT  
SUMMERFIELD'S CLOSING BRIEF**

Defendants City of Las Vegas, Carolyn Goodman and Robert Summerfield (hereinafter referred to as “City Defendants”) hereby files their Closing Brief as follows.

## CLOSING STATEMENT

At the evidentiary hearing on Plaintiff's motion for preliminary injunction the proof offered by Plaintiff failed to meet the standards for a preliminary injunction. Specifically Plaintiff has

1 failed to establish that it will suffer irreparable harm if the injunction does not issue. Plaintiff  
 2 failed to meet its burden in two aspects: First, it failed to establish that it could not financially  
 3 survive without injunctive relief, and: Second, that Plaintiff's First Amendment rights have been  
 4 violated by promulgation and implementation of Governor Sisolak's Emergency Directives.

5 ***FINANCIAL HARM***

6 At the evidentiary hearing Plaintiff offered the testimony of Ryan D. Carlson. Mr. Carlson  
 7 testified that he was the operations manager for Plaintiff Cat's Meow. Upon direct examination  
 8 Mr. Carlson testified that Cat's Meow currently has approximately \$90,000.00 cash on hand. But,  
 9 on cross examination, Mr. Carlson testified that he did not know who owned Cat's Meow. To date  
 10 Cat's Meow has not produced any evidence of who the individuals are that created the legal entity  
 11 that owns and operates the Cat's Meow and Mr. Carlson claimed under oath that, despite being  
 12 hired to start up and run the Las Vegas Cat's Meow location, he did not know who the owner or  
 13 financial backer was. Without information regarding the identity of such ownership and the  
 14 financial wherewithal of such ownership to absorb the losses claimed by Cat's Meow it is  
 15 impossible to determine if the harm allegedly being suffered by Cat's Meow is, indeed, irreparable.  
 16 Finally, even if Cat's Meow could make such a showing, which it has not, mere financial loss does  
 17 not constitute irreparable harm for the purposes of analyzing a request for injunctive relief. *L.A.*  
 18 *Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197 (9<sup>th</sup> Cir. 1980)

19 ***FIRST AMENDMENT CLAIM***

20 Plaintiff has failed to meet its burden to establish that its First Amendment rights are in  
 21 jeopardy. Rather, Cat's Meow has forwarded an argument that the First Amendment rights of its  
 22 *customers*, none of whom are parties to this case, have been curtailed by the State's prohibition on  
 23 karaoke. Consequently, Cat's Meow is without standing to challenge the Governor's directives or  
 24 the City's enforcement of those directives on this basis. It is well established that the constitutional  
 25 right to associate does not include the right of a business owner to "associate" with his customers.  
 26 See, *Freeman v. City of Santa Ana*, 68 F.3d 1180 (1985) (where the summary dismissal of a bar  
 27 owner's First Amendment claim was upheld finding that a bar can be patronized by any member  
 28 of the public.)

While the *Freeman* court acknowledged “the right to associate for the purpose of engaging in those expressive activities otherwise protected by the Constitution” (*Id.* at 1188) there has been no such showing in this case. That is, the Cat’s Meow has provided no evidence that any constitutionally protected activity has been curtailed by the City’s enforcement action. The proof offered by Plaintiff at the evidentiary hearing was wholly devoid of any evidence of any activity protected by the First Amendment of which defendants’ actions have deprived the Plaintiff. As a result, injunctive relief must be denied.

## ***CONCLUSION***

Plaintiff has failed to meet the substantial burden required for injunctive relief against the City. Plaintiff's Emergency Motion for Temporary Restraining Order (ECF No. 5) should be DENIED.

DATED this 25 day of January, 2021.

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/s/ *Jeffrey L. Galliher*

By:

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2021, I served a true and correct copy of the foregoing *Defendants City of Las Vegas, Carolyn Goodman and Robert Summerfield's Closing Brief* through the CM/ECF system of the United States District Court for the District of Nevada (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

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/s/ *Kelli Hansen*

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## AN EMPLOYEE OF THE CITY OF LAS VEGAS

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